

Quid Novi

McGill University, Faculty of Law
Volume 25, no. 15 - January 18, 2005

Tout aura donc
toujours un
prix pour toi?

Meuh non, meuh non...
Je crois en la
violence gratuite

Surtout
que ça
fait monter
les cotes
d'écoute.



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QUID NOVI

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Envoyez vos commentaires ou articles avant jeudi 5pm à l'adresse: quid.law@mcgill.ca

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Week in Review...

Mahmoud Abbas was elected president of the Palestinian Authority. He dedicated his victory to "the soul of the brother martyr Yasir Arafat and to our people." Earlier in the week, Abbas called Israel the "Zionist Enemy" at an election rally, then announced he would pursue peace talks with it. Israel shut the border at Gaza, then offered Abbas personal security in Jerusalem, which he refused.

Nearly 25 percent of Iraq will not be secure for the election, according to one U.S. military commander, who still insisted the poll date should not be changed. "I think there is a greater chance of civil war with a delay than without one," he said. Iraqi Security Force General Mohamed Shahwani said the insurgents outnumber the U.S. military, and President Bush called the upcoming Iraqi elections "hard." A suicide bomber killed twenty people at the Baghdad Police Academy, Iraq's thirteen police dogs weren't getting enough to eat, and the U.S. Army Reserves were "rapidly degenerating into a 'broken' force," a high-ranking officer said. The Iraqi government extended a state of emergency for the country for another 30 days. The U.S. killed as many as fourteen people in one family when it bombed the wrong house in northern Iraq, and the second assassination attempt on the governor of Baghdad succeeded.

Jennifer Aniston dumped Brad Pitt, Sandra Bullock gave \$1 million to charity, Scott Peterson's ex-girlfriend called him a liar, and Bill Gates announced the arrival of the digital lifestyle. Then his computer crashed. Director Oliver Stone blamed audiences and the critics for the box office failure of "Alexander." Recent studies showed that women are using less birth control. The Dingman family of Virginia was auctioning off the right to pay for surgery on a tumor infecting their 9-year-old son. Bids reached as high as \$200. Krispy Kreme Doughnuts announced that it has bad credit and that the Atkins diet was not to blame. Houston was named the fattest city in the U.S. for the fourth time in five years, and researchers found that commercial diet programs don't work very well. The Vietnamese government executed 450 ducks.

J.M.

Thistlewicke's Reporter

Being a broadsheet of Reports from Courts of Law, Admiralty and Affizes for all

Whelpinghamshire

Sir Archebald Thistlewicke, Earl of Kefwick, *Barriſter* of the Inner Temple

Michaelmas, 1624

Sir Marmaduke Wivel's Cafe

The defendant *one Muſgrave FitzHughbert*, a ſurgeon of Common Phyſic, is warranted to have declared the *plaintiff*, Sir Marmaduke Wivel, Maſter of the Star Chamber, "Sirrah, thou art a Bilge-Weened *poltroon* who bears the *shriveled appendages* of an Urchin-Snouted ſtrumpet." An action was brought in *vexatious ſlander* againſt ſaid defendant Whitherupon the *plaintiff* answered the claim by invoking likewise. "Certes! Thou art a Craven Miſcreant who *congreſſes* with ladies of *eaſy virtue* in the Ajax!" Defendant's declaration found to be *plauſible* upon inſpection, ſhewing plaintiff's Limbs bearing conditions of *advanced phlebitis* and *ague*. Action diſmiſſed.

Brambleworth's Cafe

An action in aſſumpſit, *Scil.lic.*, &c., from a likewise action in Court of Common Pleas for relief againſt deſmefnant in *fee ſimple*. Plaintiff pleading *blot* to his *eſcutcheon*. Scurrilous Knave owing debt of *feoffment* unto his aſſigns in *gavelkind*. Defendant is remanded to Sheriff for *two-fornight* in Gaol.

Snettishlea's Cafe

Defendant is *popiſh recusant* unrepented hitherupon order from Affize of *Novel Diſſeiſin* to proſcribe Romiſh Deſpotiſm. Defendant to be *deſpatched* at twilight by means of *Whirligig* and Spaniſh Donkey.

Eſtate of Baron Snig

vs.

Dr. Higginham of Wivelſcombe

The eſteem'd Baron Snig, Eſq. and Maſter of the Rolls, purchaſed from defendant one *water cloſet* with pneumatic ſiphon and one vial of knerve tonic for pleuriſy and tickes. Upon ſwallowing ſaid cordial the hale Baron took ill vapours and hath ſuffered from a moſt puſilanimous conſtitution thitherafter. His aſſigns have declared "Thou haſt poiſoned Snig and cozened my liege of ſcrupuloſitie" hence the action for libel whitherunto this Court finds for the defendant. &c.

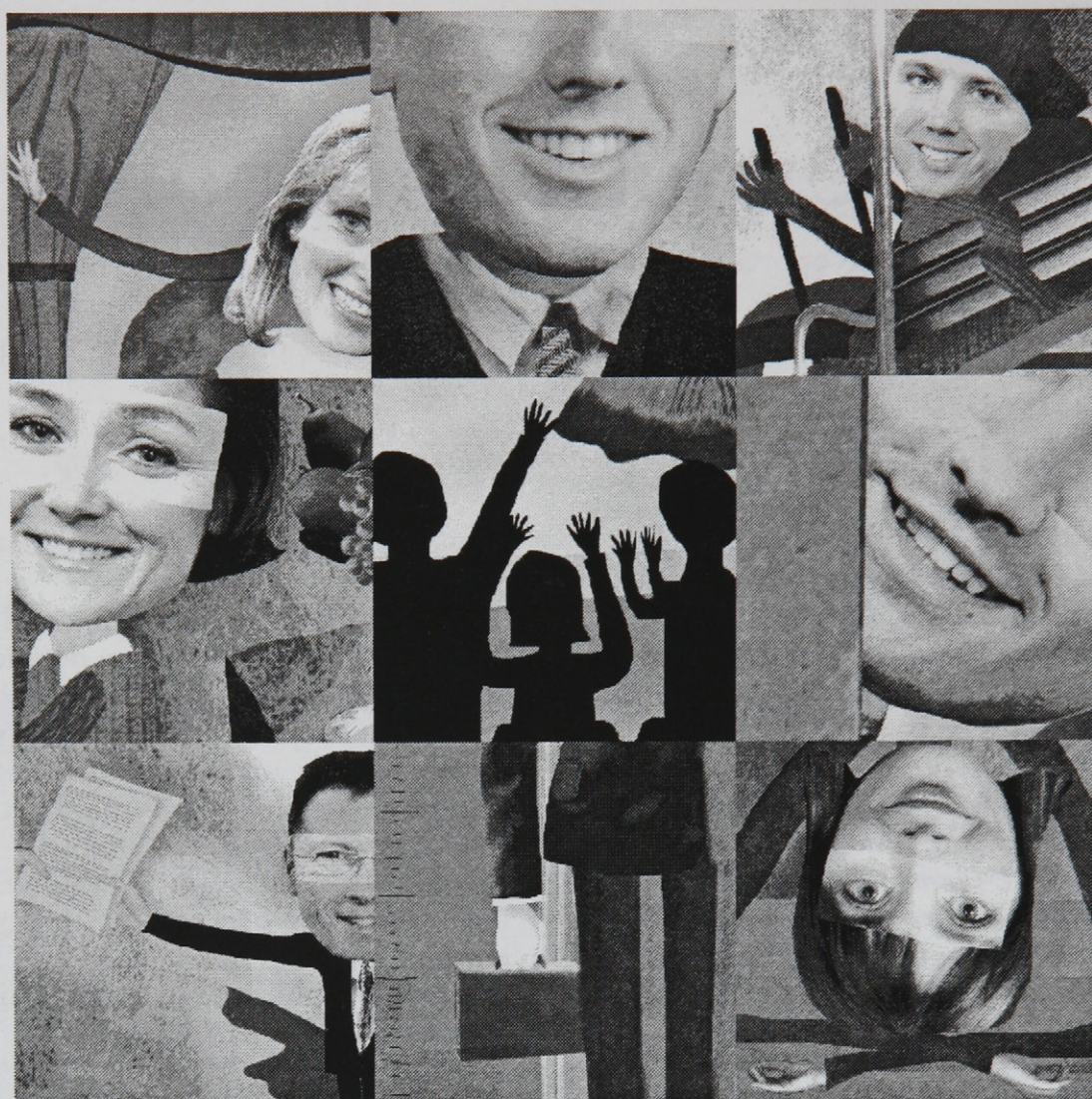
Societie of Cyttizen Fraternitys and Guyldeſ

vs.

The Company of Gentlemen Adventurers

An action from the Admiralty Courts. Plaintiff hired botſwain's mate to accompany conſignment of *ordnance* and *madeira* from Sandwich Iſlands to Siam for thirty Guineas, leſs a ha' penny. Defendant jettiſoned charge upon eſpying Galleon bearing Iberian enſigns. Thitherupon the churliſhe Spaniard Privateers *ſiphon'd* the Royal Libations. The defendant is called upon to answer the moſt heinous charge of *ſedition* and *cowardice* in the face of His Maſteſty's Execrable Enemies and for uttering "Thou holdeſt with thoſe who gainſay *His Maſteſty*. Thou gainfayer!" Action diſmiſſed with prejudice.

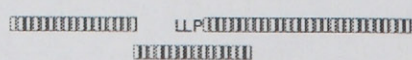
Aaron Klopp



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STIKEMAN ELLIOTT



Their Everywhere?

by Joshua Krane (Law I)

For the purposes of our legal education, we use written language to communicate our thoughts to our peers and professors. In reading the mass of case law that we encounter on a daily basis, we are bombarded with a variety of writing styles, which often fail to communicate the thoughts and intentions of the drafter. The drafter will apply grammatical rules in the same manner that a legal writer will apply precedent.

When faced with a decision, we can (1) extend a case by analogy to a set of facts based on an abstract principle or action taken by the parties. By analogy, we apply the corresponding grammatical rule to a similar set of linguistic facts. (2) We can distinguish a new case from a previous one, should we wish to avoid an unwanted result. Such cases are distinguished on the basis of interpretive differences in their facts. (3) We can defer the opportunity to overrule the (grammatical) rule to the most superior body - but that would mean that the communication, for the purposes of a law school essay would be incomplete. (4) We can ignore the prior decision and write a whole new "rule" as if the precedent does not exist, should we be unable to overrule the current rule.

But what is our role as law students in applying grammatical rules and grammatical precedent? Should we consider ourselves to be linguistic innovators that can simply ignore the rules of grammar or should we be strict adherents to them? George Orwell would suggest that we should not be breaking the ("his") rules of grammar unless the situation absolutely calls for us to do so. For the record, I have broken several of Orwell's rules in the construction of this essay. One particular breach - the discordance between a singular subject and a plural

possessive adjective - struck a chord in Me Lamed's first year legal methodology class. One interpretation of the "their" misuse posited to explain a deliberate intention to convey a gender-neutral language. This deliberate change in the deployment of the word "their" served to communicate the thoughts of many first years, as intended.

Nevertheless, we must consider the repercussions of our actions in the contamination of the English language. Other options were available, but I would like to focus on this particular use and its implications. In response to the gender argument, we need not look too far, to our sister language of French to find the use of gender non-neutral characterizations for all nouns. Does this mean that we should be extending our gender-neutral crusade here as well?

I refer you back to the Immigration and Refugee Protection Act, as referenced by Me Lamed in her Monday lecture. As she so expressly pointed out, there is an error in sub-section 12(1). The subsection states the following: "[a] foreign national may be selected as a member of the family class on the basis of their relationship as the spouse, common-law partner, child, parent or other prescribed family member of a Canadian citizen or permanent resident". The error is repeated, again and again, throughout that section of the Act. A radical change in the deployment of the word "their" perhaps? Maybe we should consider another interpretation. Consider the following explanation. Since the matter of the Act concerns refugees - people without a state and home - the possessive adjective "their" depersonalizes the subject by removing a defining characteristic of that person's identity. In using the language of "their" the drafter strips the subject both of its

gender and of its individuality by stating that such a person corresponds to a mass of persons - displaced and identity-less.

What does this mean? Should we accept the misrepresentation of the word "their" as a change in identity? Consider that in the delicate practice of transposing the Torah - the Jewish scripture - a task performed letter by letter, word by word. Thousands of years of copying the text by hand have invariably led to some errors. What should the faithful Jew do when faced with this dilemma? Should "they" abide by the text at hand, even if it is not the intent of the drafter, Moses, or the author, God him/herself? Granted this is an extreme example. But, as law students and later as lawyers, maybe this example reminds us of the delicate role of language in our profession. Perhaps we should place value on the preservation and continuity of the English language. Legal professionalism emerged to provide a measure of consistency in law. It would seem that consistency in language is a necessary requirement to the achievement of that objective. I am sure that there are instances in which errors in language become translated, if not reified in linguistic rules. Maybe, sub-section 12(1), like the mistakes in the Torah are simply products of human error - and not simply dramatic stances on the gender-neutrality in language. If they are products of human error, perhaps they should be treated as such. ■

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INNOCENCE MCGILL RECRUTE DE NOUVEAUX MEMBRES

Milgaard, Marshall, Morin, Sophonow, Phillion, Driskell, Truscott ... les condamnations injustifiées sont une réalité au Canada qui ébranlent notre confiance dans le système de justice et contribuent à de nombreuses tragédies personnelles. De plus, il existe peu de voies par lesquelles les erreurs judiciaires peuvent être dévoilées. Innocence McGill a été créé afin de jouer un tel rôle au Québec.

Le premier projet innocence a été établi en 1992 au Benjamin N. Cardozo School of Law à New York. Étant une clinique judiciaire à but non-lucratif, ce projet se concentre sur des analyses de preuves visant uniquement l'ADN afin de démontrer l'innocence des condamnés. Depuis son lancement et grâce aux efforts de plusieurs étudiants et avocats externes, le projet à Cardozo a réussi à libérer 152 innocents. Entre temps, de nombreux projets se sont établis partout aux États-Unis, et la faculté de droit de Osgoode Hall fut, en 1998, le premier projet innocence au Canada.

Innocence McGill a été formé il y a un an afin de joindre ce réseau international en servant la communauté québécoise. Onze étudiants de la Faculté participent présentement au projet et nous souhaitons ajouter jusqu'à cinq nouveaux membres. Avec l'appui du Barreau du Québec et de notre Faculté, et sous la supervision d'un conseil consultatif composé d'avocats reconnus en droit criminel, notre groupe d'étudiants prépare le lancement d'Innocence McGill à la fin du mois de janvier 2005. Les nouveaux membres du projet auront l'occasion de contribuer à tous les aspects des opérations d'Innocence McGill, y compris l'examen des applications des condamnés, les enquêtes, la recherche juridique, la gestion des dossiers, la traduction, la correspondance avec le public et les médias, ainsi que plusieurs autres responsabilités.

Veuillez noter que la préférence sera accordée aux candidats qui remplissent les critères suivants :

- * capacité de travailler en français et en anglais
- * un intérêt en droit criminel
- * demeurera à Montréal pendant l'été 2005
- * au moins 2 autres années à la Faculté
- * esprit d'équipe

Les étudiants qui s'intéressent au projet doivent soumettre une lettre d'une page démontrant leur intérêt par courriel à innocence.law@mail.mcgill.ca au plus tard le 25 janvier 2005. Les candidats seront avisés des résultats de leur application le 1er février 2005. Des entrevues seront accordées les 2, 3 et 4 février prochain.

Pour toute question ou autre renseignement concernant le projet, n'hésitez-pas à contacter un des membres actuels d'Innocence McGill et de visiter les sites web des autres projets.

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The Osgoode Hall Law School Innocence Project:

www.innocenceproject.ca

The Innocence Project at the Benjamin N. Cardozo School of Law:

www.innocenceproject.org

Northwestern University School of Law Center on Wrongful Convictions:

www.law.northwestern.edu/wrongfulconvictions

INNOCENCE MCGILL IS RECRUITING

Milgaard, Marshall, Morin, Sophonow, Phillion, Driskell, Truscott...wrongful convictions are a reality in Canada that undermine the justice system and spell individual human tragedy. What's more, there are woefully few avenues through which these miscarriages of justice can be addressed. The McGill Innocence Project has been designed to be such an avenue.

The first Innocence Project was established at the Benjamin N. Cardozo School of Law in 1992. Operating as a non-profit legal clinic, the project focuses on using post conviction DNA testing of evidence in order to prove the innocence of convicted inmates. Since its inception, through the effort of students and external legal council, the Cardozo Innocence Project has successfully exonerated 152 wrongfully convicted individuals. Over the years numerous chapters have been established across the United States; the first Innocence Project in Canada was established at Osgoode Hall Law School.

Innocence McGill was formed last year to join this network and serve the Quebec community. Currently, 11 students are actively involved in the Group; we are looking to add up to five new members. With Quebec Bar approval, faculty funding and support, and an advisory board composed of prominent criminal lawyers, we are preparing to launch Innocence McGill in late January. Members of Innocence McGill will have the opportunity to contribute to all aspects of the Group's operation including reviewing applications, fact development and investigation, legal research, case management, fundraising, translation, public outreach, and other responsibilities as required.

Please note that preference will be given to candidates who satisfy the following criteria:

- " Ability to work in French and English
- " Interest in criminal law
- " In Montreal for the 2005 Summer
- " At least two years left at the faculty
- " Team-oriented

Students interested in joining Innocence McGill should submit a 1-page letter of interest.

Applications should be emailed to: innocence.law@mail.mcgill.ca no later than January 25th. Candidates will be notified about the outcome of their application February 1st. Interviews will be held February 2nd, 3rd and 4th.

For questions and additional information about the Innocence Project feel free to contact any of the current members of Innocence McGill and to peruse the websites of other Innocence Projects:

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www.innocenceproject.ca

The Innocence Project at the Benjamin N. Cardozo School of Law:
www.innocenceproject.org

Northwestern University School of Law Center on Wrongful Convictions:
www.law.northwestern.edu/wrongfulconvictions

Law Games 2005!

by Michael Hazan (Law III - LSA President)

I just wanted to say thank you to all 76 members of the McGill delegation who attended the annual Law Games in Ottawa. Thank you for participating, cheering your school on and partying like rock stars (although we were well behaved). Bringing the academic trophy

back to Chancellor Day Hall for the third consecutive year is especially sweet and I wanted to thank Ben Aronovitch and Steve Curran for their mooting, Graham Campbell for his public speaking and the brilliant trivia team (Ian, Paul, Joe, Eleasha and Martin). Above all else, we

must congratulate VP Athletics Matt Bilmes on an amazing job. We all owe him a debt of gratitude as he left no stone unturned in his preparation. I really hope you all had a wonderful time and that you will return next year. ■

Course Packs. The Good and the Unreasonably Bad

by Lisa Schneiderman (Law II)

This semester, all my professors seemed to bring their course packs to the first day of class and use them as a visual aid to demonstrate that there would be required reading. Every time this happened, I could feel my eyes open widely and a slight sense of panic set in. There is no way I can do that much reading in one semester and still take other courses, eat, sleep and maintain a minimal social life.

I know that course packs are a great thing. They allow each professor to develop their own course and teach all (and only) the material that they believe to be important for our understanding of the subject in an organized manner. As a result, I don't have to purchase an expensive textbook that the course rarely uses or keep track of additional supplements. In addition, I don't have to waste time searching for and photocopying each case and article.

Yet I have two major problems with course packs. Firstly, is the size for real? Can I really be expected to do all the reading and learn in a constructive way? I'm convinced that students rely on summaries because the course packs are unmanageable. After a certain number of pages I am forced to pick and choose articles at random and hope that they are the ones I am tested on. Or I can skim all the articles but gain little depth in a topic, something I really object to in upper-year courses.

Secondly, aside from being an environmental disaster, the size of the

course packs has led them to cost as much as textbooks. Thankfully, there is a solution. This semester, 17 students had the advanced common law obligations course pack photocopied at Minolta. The price dropped significantly, from the \$107 charged at the bookstore to \$41.70. And the cost would have been even lower if more students had taken part. (Btw, this course pack is insane. 3 volumes for 2 credits! Either the reading or the number of credits needs to be changed).

With such a dramatic difference in price, why aren't all professors having their course packs printed at one of the nearby copy shops? Apparently there is a copyright issue. I know we are in a law faculty and I should have some degree of legal morality, but it doesn't make any sense to pay so much more money for course packs, especially when most of the material included is in the public domain and being used for educational purposes. If we really want to be

sticklers, can the material which requires a copyright be sold at the bookstore in a slim (overpriced) course pack and all the cases be printed at Minolta?

I know that this is a small request, but it would be an easy way for the faculty to demonstrate their concern for students and make us happier. At this time of year, there is no need to remind anyone that books are very expensive. ■

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Compétition féroce lors des quarts de finale des Débats Face à Face

Jean-Philippe Dallaire (Law II)

Le 12 janvier dernier se tenait à la Faculté la première étape des éliminatoires de la compétition de débats oratoires Face à Face. Les équipes en présence devaient rivaliser d'éloquence pour convaincre les juges et le public d'adopter leur position, tirée au hasard, sur un sujet d'actualité, soit "POUR ou CONTRE les partenariats public-privé dans les services publics au Québec et au Canada? ". Comme le comité d'organisation s'y attendait, la compétition fut très féroce et ce, même s'il n'était alors question que

des quarts de finale. Les juges ont eu une grande difficulté à décider de l'équipe victorieuse pour chacun des débats, deux de ceux-ci ne s'étant notamment soldés que par une différence infime de 4 points sur 120. Le comité d'organisation désire sincèrement remercier Jean Abboud, Carol Gagné, Daniel Radulescu et Patrick Tremblay pour leur collaboration à titre de juges lors de cette première étape.

Le processus devant mener à la sélection des représentants de McGill à la finale canadienne se déroulera le

mercredi 19 janvier, de 12h30 à 14h30, dans les salles 201 et 202 du New Chancellor Day Hall. Les équipes en compétition seront composées de : Jean-François Bisson-Ross et Prachi Shah, François Beaudry et Laurence Bich-Carrière, Frédéric Wilson et Nicolas Brochu, Mathieu Deschamps et Marc-André Laflamme. Tous sont invités à venir assister aux débats. Le sujet de ceux-ci sera : " Pour ou contre la délocalisation d'emplois vers des pays émergents? ". ■

Quid Newswatch: The Week That Was and the Week Ahead

by The Quid Staff

Abu Ghraib In Fort Hood, Tex., a military jury convicted Specialist Charles A. Graner, the Army reservist accused of being the ringleader of the Abu Ghraib prison abuse scandal. He was found guilty on all five counts and faces up to 15 years in prison.

Lighen Up The federal government issued new dietary guidelines, for the first time emphasizing weight loss as well as healthy eating and cardiovascular health. The guidelines recommend more fruits and vegetables, more low-fat milk, more whole grains and more exercise. "Tonight eat only half the dessert," Tommy Thompson, secretary of health and human services, said. "And then go out and walk around the block. And if you are going to watch television, get down and do 10 push-ups and five sit-ups."

There are those who have criticized the size of the festivities surrounding President Bush's inauguration on Thursday. At \$30 million to \$40 million, the cost is more than twice America's initial offer of tsunami relief - but this administration has no corner on ostentation. At an inaugural ball for James Buchanan in 1857, 6,000 guests consumed 400 gallons of oysters, 500 quarts of chicken salad, 1,200 quarts of ice cream, 60 saddles of mutton, 8 rounds of beef, 75 hams, and, lest we forget, 125 tongues, according to the official

inaugural Web site.

Excess has its limits, though. There had been reports that Kid Rock, a rock-rapper who was a loud and unruly supporter of the Bush campaign, would star at a Tuesday concert where the Bush twins would be hosts, but organizers were assailed by conservatives and opted for the G-rated songstress/actress Hilary Duff. Perhaps the committee got hold of Kid Rock's classic "Pimp of the Nation," which suggested he could procure the services of almost any woman, including Barbara Bush, the former first lady. Of course, there will be counterprogramming. Protesters at the inaugural parade, for example, will turn their backs on the president's motorcade.

Leave it to New Orleans to come up with a musical non-tribute. On Thursday, protesters will stage a musical march through the city in a mock funeral for democracy. Those who do not play an instrument - the term of art in New Orleans is "second-liners" - must observe local custom. The official Web site of the event advises: "The cardinal rule a second-liner must follow is never get among the official procession," the organizers write, adding: "This rule is not only for the musicians' safety, but for yours. Nobody wants to get a tuba upside the head." Even nonviolent protest has its hazards.

For all the lawyers and spinners waiting in Florida in the event of another contested election, the 2004 Presidential campaign proved to be a bust. But in the opposite corner of the country, the post-election contest for governor of Washington State has become a mini-Florida, a sign, perhaps, that contested elections are now part of both parties' playbooks.

The United Nations World Conference on Disaster Reduction would seem to be an urgent response to the tsunami in South Asia. But the conference, which opens Tuesday, was timed to coincide with the 10th anniversary of the earthquake that devastated Kobe, Japan. That city will be the site of the summit, whose theme is how to limit the devastation that nature doles out to humankind. To be discussed: data from the International Red Cross that indicates that 95 percent of natural disaster fatalities occur in poor countries.

There are natural disasters and there are man-made ones, like the seasonal TV ratings so far for Fox. Help is on the way. On Tuesday, a new version of "American Idol" arrives. To level the playing field, and perhaps goose ratings, half of the finalist slots are promised to men. Maybe William Hung has a shot after all. ■



L'ASSOCIATION DU DROIT DES AFFAIRES DE MCGILL (MBLA) ET
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DE LA FACULTÉ DE DROIT DE L'UNIVERSITÉ MCGILL À UNE SESSION DE FORMATION.

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Movie Review: "House of Flying Daggers"

by Aram Ryu, Co-Editor-in-Chief (Law III)

House of Flying Daggers" is the second film by the critically acclaimed director Zhang Yimou to be released in 2004 in North America. Just like his first movie "Hero", "House of Flying Daggers" presents an extraordinary story set in Ancient China towards the end of Teng dynasty (a.d. 859). However, this movie has a lot more substance without sacrificing the outlandish visuals and fight sequences. In addition, this movie is more coherent and reasonably ground in reality: the story is presented in a chronological order instead of constant flashbacks. Even though the story is more likable and the characters are more fleshed out, it still is hard to recommend this movie for the substance because that is not what sets "House of Flying Daggers" apart from other kung fu movies: almost picture perfect scenery and mesmerizing art direction are certainly worth the admission price to the movie theatres.

Simply put, the movie features a love triangle between the main characters and as many twists and turns as "Once Upon a Time in Mexico", directed, written, scored, edited and shot by Robert Rodriguez. House of Flying Daggers is an underground revolutionary movement, intent on fighting the governments and getting rid of the corruption. After their leader is killed, it

is rumoured that his blind daughter is working as a courtesan and she is subsequently captured. Soon after, one of the captains, disguising as a warrior looking to join the House, helps her escape and they set on a journey to go back to the House through luscious fields with wildflowers and menacing bamboo forests complete with almost green mists. Of course, since this is indeed a martial arts movie, they battle often with soldiers who are sent to capture the escaped prisoner along with the lone warrior who helped her, with fairly bloody and gory results. Without giving away all the secrets that the main protagonists hide from each other (and from the viewers), the romance is surprisingly well thought and it doesn't feel like an afterthought. As you progress along the storyline, your notions of the main characters will evolve until the very end where they are involved in a fight to the death on a meteorologically-challenged scenery.

One of the problems with the visuals in "Hero" was how artificial and sometimes radioactive they were, mainly during the flashback scenes that were colour-coded. It was especially unnerving to see the characters battle in front of pink trees. Even though the spectacle was striking, it made the movie look as if it were set in an alien

landscape. This time, the coherent and more believable visuals help us identify as much as we can with the main protagonists and invite us to suspend our beliefs on physics and logics to simply enjoy the show. Even if we know it is impossible for four arrows shot in order by a single person to arrive at the targets at the same time, the camera tracking them and subsequently hitting all four intended targets just at the right moment is simply for the sole benefit of beautifully artistic shot. Distorting the reality has never been this sublime.

Starting with "Crouching Tiger and Hidden Dragon" in 2000, a sub-genre of kung fu "wire-fu", affectionately named after the stunt wires that are used to make actors jump from bamboo trees and bounce off lakes, has become mainstream in North America, finding critical and commercial success. The elegance of these movies combined with their superb visual presentation stand out when compared to Hollywood action movies that have become more jagged, unnecessarily gory and visually uninspiring. As long as you don't expect too much from the story, one of the most beautifully shot movies of the year will simply amaze you visual wonders and provide you an experience out of this world. ■

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